

§ 1.105-5

26 CFR Ch. I (4-1-13 Edition)

§ 1.105-5 Accident and health plans.

(a) *In general.* Sections 104(a)(3) and 105 (b), (c), and (d) exclude from gross income certain amounts received through accident or health insurance. Section 105(e) provides that for purposes of sections 104 and 105 amounts received through an accident or health plan for employees, and amounts received from a sickness and disability fund for employees maintained under the law of a State, a Territory, or the District of Columbia, shall be treated as amounts received through accident or health insurance. In general, an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness. A plan may cover one or more employees, and there may be different plans for different employees or classes of employees. An accident or health plan may be either insured or noninsured, and it is not necessary that the plan be in writing or that the employee's rights to benefits under the plan be enforceable. However, if the employee's rights are not enforceable, an amount will be deemed to be received under a plan only if, on the date the employee became sick or injured, the employee was covered by a plan (or a program, policy, or custom having the effect of a plan) providing for the payment of amounts to the employee in the event of personal injuries or sickness, and notice or knowledge of such plan was reasonably available to the employee. It is immaterial who makes payment of the benefits provided by the plan. For example, payment may be made by the employer, a welfare fund, a State sickness or disability benefits fund, an association of employers or employees, or by an insurance company.

(b) *Self-employed individuals.* Under section 105(g), a self-employed individual is not treated as an employee for purposes of section 105. Therefore, for example, benefits paid under an accident or health plan as referred to in section 105(e) to or on behalf of an individual who is self-employed in the business with respect to which the plan is established will not be treated as received through accident and health in-

surance for purposes of sections 104(a)(3) and 105.

[T.D. 6722, 29 FR 5071, Apr. 14, 1964]

§ 1.105-6 Special rules for employees retired before January 27, 1975.

(a) *Application of section 105(d) to amounts received as retirement annuities.* An employee who retired from work before January 27, 1975, receiving payments under his employer-established plan (to which § 1.72-15(a) applies) which payments were not treated as amounts received under a wage continuation plan for purposes of section 105(d), may, as of the date the employee retired, treat such plan as such a wage continuation plan to the extent such payments are received prior to mandatory retirement age (as described in § 1.105-4(a)(3)(i)(B)), if—

(1) His employer had in operation at the time of his retirement a program providing accident and health benefits under a wage continuation plan to which section 105(d) would apply;

(2) The employer certifies, under procedures approved in advance under paragraph (c) of this section, that the employee would have been eligible for wage continuation benefits, under the terms and conditions of his employer's plan, because of personal injuries or sickness;

(3) At the time of the employee's retirement there was no substantive difference between the benefits being actually received and the benefits he would have received had he retired under his employer's wage continuation plan; and

(4) The employee agrees to the adjustments and conditions required by the Commissioner with respect to amounts excluded under section 72 (b) or (d) in taxable years ending before January 27, 1975.

(b) *Filing requirements.* (1) The certification required in paragraph (a)(2) and the agreement required in paragraph (a)(4) of this section shall be filed on or before April 15, 1977, with the return, or timely amended return or claim, made for the taxable year in which the employee reached retirement age as described in § 1.79-2(b)(3), or, for the first taxable year for which the taxpayer files an income tax return claiming an